

BERNARD PEASE

IBLA 79-404

Decided October 17, 1979

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting drawing entry card oil and gas lease offer W 67741.

Affirmed.

1. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Drawings

Where a drawing entry card form of offer to lease a parcel of land for oil and gas is prepared by a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent or attorney-in-fact on behalf of the offeror, the requirements of 43 CFR 3102.6-1 apply, so that separate statements of interest by both the offeror and the agent must be filed, regardless of whether he signed his principal's name or his own name as his principal's agent or attorney-in-fact, and regardless of whether the signature was applied manually or mechanically.

APPEARANCES: Lewis G. Isaacson, Esq., Isaacson, Rosenbaum, Spiegelman & Friedman, Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Bernard Pease appeals from the Wyoming State Office, Bureau of Land Management (BLM), decision dated April 20, 1979, which rejected his drawing entry card (DEC) W 67741, given first priority for Parcel

WY 2769 in the March 1979 simultaneous oil and gas leasing program, for failure to comply with 43 CFR 3102.6-1. 1/

The subject DEC bears a facsimile signature of Bernard Pease and had an attachment stating that the Oil and Gas Corporation of America (OGCA) has full permission to use his facsimile signature for purposes of trying to secure oil and gas leases in the United States Government simultaneous oil and gas leasing program; that OGCA will select the parcels; and that OGCA has no financial interest in any lease so acquired in his name. The attachment was not dated and bore facsimile signatures of both Bernard Pease and of Joseph G. Pite, president, OGCA.

Appellant does not contend that his submission accorded with the requirement that separate statements be filed. Rather, appellant argues that 43 CFR 3102.6-1 does not make any reference to facsimile signatures so that application of that regulation is arbitrary and capricious in this case. He states it was his intention to file the subject DEC and that the card bears his signature. He contends that the signature by an attorney-in-fact or agent, referred to in 43 CFR 3102.6-1, applies only to a situation where the DEC is "signed by" an attorney-in-fact or agent on behalf of the offeror, and not in this situation where there is a facsimile signature which, although impressed on the DEC by another person, the offeror accepts as his signature.

The arguments of appellant have been considered by this Board in a number of earlier cases.

1/ The regulation 43 CFR 3102.6-1 provides pertinently:

"(2) If the offer is signed by an attorney-in-fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney-in-fact or agent or such other person has received or is to receive any interest in the lease when issued, including royalty interest or interest in any operating agreement under the lease, giving full details of the agreement or understanding if it is a verbal one. The statement must be accompanied by a copy of any such written agreement or understanding. If such an agreement or understanding exists, the statement of the attorney-in-fact or agent should set forth the citizenship of the attorney-in-fact or agent or other person and whether his direct and indirect interests in oil and gas leases, applications, and offers including options for such leases or interests therein exceed 246,080 acres in any one State, of which no more than 200,000 acres may be held under option, or exceeds the permissible acreage in Alaska as set forth in § 3101.1-5. The statement by the principal (offeror) may be filed within 15 days after the filing of the offer."

This Board, in D. E. Pack, 30 IBLA 166, 84 I.D. 192 (1977), held essentially that the signature of an offeror on a drawing entry card (DEC) in the simultaneous oil and gas leasing procedures of BLM may be affixed by a rubber stamp if it is the intention of the offeror that the impressed facsimile be his or her signature, but if the signature was impressed by an agent of the offeror, the requirements of 43 CFR 3102.6-1(a)(2) apply, and if the separate statements of authority and disclosure of interest by both the offeror and the agent have not been filed, the DEC will be rejected.

Pack arose from a drawing in the BLM Utah State Office for Parcel UT 1408 in the August 1976 notice of lands available for simultaneous filing for oil and gas lease offers. The DEC of John S. Runnells was drawn first priority for this parcel. D. E. Pack, alleging that he had filed a DEC for this parcel, but not one drawn among the three cards given priority of consideration, protested the bona fides of the Runnells DEC. Inquiry by BLM disclosed that Stewart Capital Corporation (Stewart), acting on authority granted to it by John S. Runnells, and on behalf of Runnells, did select the land for which the DEC lease offer was made, did apply the facsimile signature of Runnells to the DEC, did file the DEC with BLM, and did advance payment of the first year's rental for the lease to be issued in response to the winning priority given to the DEC of Runnells. The explanation by Runnells satisfied BLM and it dismissed Pack's protest. Pack appealed to this Board. The Board reversed, holding, as pointed out above, that the absence of separate statements by Stewart and Runnells required rejection of the DEC of Runnells.

[1] Thereafter, Stewart petitioned the Secretary of the Interior to exercise supervisory power and to take jurisdiction over a number of similar appeals pending before this Board. The Secretary declined to take such jurisdiction, but directed the Board to reconsider Pack. The Board heard oral argument after extensive briefing by counsel for Stewart and for BLM, following which the Board sustained its holding in Pack, supra, stating:

Where a drawing entry card form of offer to lease a parcel of land for oil and gas is prepared by a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent or attorney-in-fact on behalf of the offeror, the requirements of 43 CFR 3102.6-1 apply, so that separate statements of interest by both the offeror and the agent must be filed, regardless of whether he signed his principal's name or his own name as his principal's agent or attorney-in-fact, and regardless of whether the signature was applied manually or mechanically. [Emphasis added.]

D. E. Pack (On Reconsideration), 38 IBLA 23, 85 I.D. 408 (1978). Accord, J. A. Masek, 40 IBLA 123 (1979).

So, in this case, where the DEC was prepared by OGCA under discretionary authority to act on behalf of appellant by selecting the tract to be applied for, and the DEC was signed by OGCA, as agent for appellant, by impressing on the DEC the facsimile signature of appellant, separate statements of both appellant and agent were required by 43 CFR 3102.6-1. In the absence of such statements, the DEC was properly rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

